

BOARD OF PESTICIDES CONTROL

December 17, 2004

Board Rooms, Senator Inn & Spa
284 Western Avenue, Augusta

AGENDA/MINUTES

Chair Carol Eckert called the meeting to order at 9:35 A.M. Other members in attendance included Berry, Humphreys, Jemison, Simonds and Walton. Bradstreet was unable to attend.

9:30 A.M.

1. Introductions of Board and Staff

The members and staff introduced themselves.

2. Minutes of the November 5, 2004 Board Meeting

Action Needed: Amend and/or Approve

Simonds/Walton: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

3. Public Information Gathering Session Regarding Development of a New Proposal for Chapter 26 – Standards for Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools

At the September meeting, the Board recognized there had been considerable opposition to the initial June 30, 2004 proposed rule. The members voted to reject that version in favor of hosting a series of public information gathering sessions. The purpose was to seek input from affected parties before the staff develops a new proposed rule. Health care providers, correctional officials and pest control operators presented information at the October meeting and representatives of the restaurant, innkeeper, tourism, grocer and convenience store businesses discussed their issues with the Board at the November meeting. Persons involved with nursery schools, childcare facilities, environmental and public health groups, governmental agencies, renter and landlord associations, public advocate groups and the general public are invited to address the Board at what is expected to be the last public information gathering session. It is anticipated that the Board will then announce a three-week period in which interested parties may make written submissions suggesting practical approaches to address concerns raised in the public information gathering sessions. Any written public input should be designed to allow the Board to meet its goals of minimizing exposure through increasing the use of integrated pest management and providing disclosure to long-term occupants including residents and employees but not regular customers or service personnel. The staff will then consider this information in the drafting of a new proposed rule.

☑ Eckert welcomed everyone to the informal public information gathering session and called for a show of hands on how many people wished to address the Board. Initially seeing only three people raise their hands, Eckert invited interested persons to address the Board as follows:

- Amanda Sears, Environmental Health Strategy Center, supported having standards for indoor applications because people spend most of their time indoors. Referenced the CDC report indicating people carry residues of 13 pesticides in their blood and urine. Recommended the Board strengthen the proposed rule so notification is not limited to those reentering a facility within 24 hours of an application. Explained that workers should be aware of any applications made over the weekend when they were not present.

- Ruth Gabey, Maine Green Independent Party, reviewed history of health problems and the politics associated with chlorinated hydrocarbons. Recommended the Board oppose the special interests and protect the public health.

- Jody Spear, chemical sensitive individual, recommended the Board not knuckle under to pesticide users and move forward with an expanded rule that would also provide notice to regular customers and service people.

- Sharon Tisher, Maine Organic Farmers & Gardeners, expressed her belief that the original proposal was 95% workable and that the Board could tweak it to account for emergency situations and operations that were open 24/7. Referenced the success of an IPM plan at Acadia Hospital and also described scientific studies where application of cholinesterase inhibitor pesticides had caused aggressive behavior in humans.

- Sarah Rockwell, tenant, student interested in social work, presented information from the perspective of low-income tenants who may not be able to read English and need notification in their native language. Also explained that notification is necessary because their kids spend a lot of time on the floor and put things in their mouth.

At the conclusion of the public information gathering session, the members remarked on the complexity of the rule including the need to address 24/7 operations, different requirements for prisons and nursing homes, and ways to accommodate emergency situations. There was agreement that the Board would accept written constructive comments through January 21, 2005. Eckert asked Randlett if the Board could convene in workshop sessions to assist staff in constructing a new rule. Randlett replied affirmatively so long as the Board did not accept any public input during the workshop sessions.

4. Section 18 Emergency Registration Request for Propiconazole to Control Mummy Berry Disease in Blueberries

For the preceding six years, the Board has petitioned EPA for a FIFRA Section 18 specific exemption for use of propiconazole (Orbit 3.6E) to control Mummy Berry disease in wild blueberries. However, a time-limited tolerance for this active ingredient expired December 31, 2003 and EPA did not pursue renewal of the tolerance for 2004 due to objections raised by the Natural Resources Defense Council over the safety of the product. Instead, EPA recommended that the Board petition for the use of fenbuconazole

(Indar and Enable) that they had already approved for use on high bush blueberries in several states. Information recently received from Maine low bush blueberry growers indicates that fenbuconazole did not provide adequate control of Mummy Berry disease this past spring. The Cooperative Extension Blueberry Specialist has therefore requested that the Board again petition EPA for the Section 18 specific exemption and establishment of a time limited tolerance for propiconazole. He points out this is necessary because there are no effective alternatives to control Mummy Berry and a heavy infestation could cause significant economic losses to Maine growers.

Presentation By: Wesley C. Smith
Pesticides Registrar

Action Needed: Approve/Deny request to petition EPA for a Section 18 Specific Exemption registration for propiconazole for blueberries.

- Smith explained that the Board had approved these requests for six years prior to the last year when the time limited tolerance had expired. He noted that EPA had addressed the objections raised by the Natural Resources Defense Council and pointed out EPA had recently approved Section 18 registrations for propiconazole to control soy bean rust. Dave Yarborough, UMCE Blueberry Specialist, stated that propiconazole is the only material currently available that will provide effective control. He further explained that it does not have curative power and has to be applied before the disease appeared. In addition, he noted that growers have been following an IPM program and in dry years have been able to cut their fungicide use in half. Batteese called the member's attention to a letter from Larry Lack questioning if a true emergency exists. Humphreys expressed agreement with the points raised by Lack and observed there was missing data on potential exposures to farmworker children. Both Yarborough and Dave Bell, Wild Blueberry Commission, agreed they were equally uncomfortable with the entire federal registration process. However, they still needed a Section 18 for propiconazole for 2005 because EPA had not completed its review for a full Section 3 label and the manufacturer of the only other effective material was not interested in getting Funginex reregistered in the United States.

Walton/Berry: Motion made and seconded to petition EPA for a Section 18 Specific Exemption registration for propiconazole for blueberries.

In Favor: Berry, Eckert, Jemison, Simonds and Walton
Opposed: Humphreys

5. Requests from Training Development Corporation and Maine Migrant Health Program for Grant to Help Support a Worker Protection Safety Training Program for Summer 2005.

Until this year, the Board since 1995 has supported a Migrant and Seasonal Farmworker Program conducted by the Training and Development Corporation (TDC) of Bucksport. At the January meeting, the Board learned the TDC would be unable to provide the pesticide safety training this summer because the AmeriCorps members it has utilized in the past were not be funded at the national level in 2004. The Maine Migrant Health Program (MMHP) had worked closely with the TDC trainers in past years, and at the

March meeting, the Board directed staff to fund MMHP so pesticide safety training would again be available to farmworkers this past summer. TDC has recently learned that funding for AmeriCorps will again be available in 2005 and is seeking to work in partnership with MMHP to host one AmeriCorps member and one Health Educator during the 2005 agricultural season. The staff will point out the total cost to provide matching funds to both agencies will be less than that expended in this current year's grant to MMHP.

Presentation By: Barbara Ginley and Jack Frost
 MMPH Executive Director TDC Project Manager

Action Needed: Discussion and determination if the members wish to have staff
 fund these grant requests.

- Frost reported that the two agencies had always partnered well together and that federal funding was again available if the Board could provide matching funds. He explained that he was seeking a 900 hour position that would run from March through August. The person chosen would be bilingual and would work primarily in Aroostook County with broccoli growers except during July and August when they would focus on blueberry production. Ginley explained that providing the worker protection training worked well in connecting the workers to health care. Her agency was seeking matching funds to have a second health educator available in 2005.

Humphreys asked Batteese if the Board could afford to provide \$3,465 in light of its current budget situation. Batteese replied that revenue had actually exceeded expenditures the past fiscal year and that it was the only option for providing a bilingual trainer. Fish observed that granting the matching funds would allow the two agencies to access a much larger amount of federal funding.

Humphreys/Walton: Motion made and seconded to have staff fund these grant requests.

In Favor: Unanimous

6. Adoption of Proposed Housekeeping Amendments to Chapters 10, 22, 24, 32 and 50

At the October 8, 2004 Board meeting, the members directed staff to initiate rule-making with no public hearing but a thirty day comment period on several housekeeping amendments that were reviewed at the April Planning Session. In general, these revisions were intended to incorporate recently adopted policies, eliminate obsolete references and provide additional clarification on several topics. The Secretary of State published notice in the newspapers on November 3rd and the staff also mailed notices to over 3,000 applicators, dealers and other interested parties at the same time. The comment period closed on December 6th and not a single comment was received. The staff has therefore prepared the rules for adoption at this meeting.

Presentation By: Robert I. Batteese, Jr.
 Director

Action Needed: Discussion and determination if the members are ready to adopt the amended rules and supporting basis statements.

- Batteese advised that no comments had been received and recommended the Board adopt the amendments as published. He also pointed out Randlett had reviewed the basis statements for the five chapters.

Berry/Walton: Motion made and seconded to adopt the amended rules and supporting basis statements for the five chapters.

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with City of South Portland, Parks & Recreation Department

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved an employee's commercial application of an herbicide to tree wells in the School Street City Park that was listed on the 2003 Pesticide Notification Registry. The Department failed to provide notice to the registrant in advance of the application which is a violation of the registry provisions in Chapter 28.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- Jennings advised that the staff takes violations of the pesticide notification registry very seriously even in cases where a city crew made a non-powered application to tree wells in a city park.

Simonds/Berry: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

8. Consideration of Staff Negotiated Consent Agreement with Sam's Club of Bentonville Arkansas

This case is similar to the preceding agenda topic where there was no dispute of material facts and law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involved the Augusta, Bangor and Scarborough stores of this general use pesticide dealer that on nine different dates over a three year period had failed to post signs in their self-service display area as required by Chapter 24.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- Jennings pointed out that although there are only three Sam's Club stores in Maine the staff has found it more effective to deal directly with their headquarters office in Arkansas. He stated that officials there had been very cooperative and were having the required signs printed on plastic so they would last longer. In addition, they had added a bar code to the signs so the stores could purchase them in bulk.

Humphreys/Berry: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous.

9. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Nominations and election of officers.

- Batteese pointed out the statute requires an annual election of officers and asked for nominations.

Humphreys/Jemison: Motion made and seconded to elect Eckert as Chair and Berry as Vice-Chair.

Batteese asked if there were any more nominations and hearing none recorded the vote as follows:

In Favor: Humphreys, Jemison, Simonds and Walton
Abstain: Berry and Eckert.

10. Other Old or New Business

a. 2004 Pesticide Product Registration Summary – W. Smith

- Smith asked if the members had received his December summary memo in their packets, and upon learning that they had not, advised that he would make sure they received it at the next meeting. He did advise the number of products registered in 2004 had increased by 6.1% and income had exceeded expenditures by \$17,000 the past fiscal year.

b. Legislative Update – R. Batteese

Batteese reported that DEP was still planning to seek legislation to place a surcharge on pesticides sold to homeowners. He advised that the bill had not yet been printed but should be available by the next meeting.

c. Other ????

Eckert reported that Hicks was having trouble obtaining appropriate data for the requested review of the dye products. In the meantime, she was still reviewing trichlorfon studies.

Batteese called the member's attention to the e-mail message in their packets from the Brunswick Town Planner. It commended Fish for his professional manner while assisting their planning board with potential amendments to their local pesticide ordinance. The members congratulated Fish and thanked him for his efforts.

11. Schedule and Location of Future Meetings

a. The Board has tentatively scheduled the next meeting for Friday, January 14, 2005 with a snow date of January 21st.

The Board scheduled the next meeting for Friday, January 14th in the Waterville area with a snow date of January 21st.

b. Location and date for the following meeting.

The Board tentatively scheduled the following meeting for February 18th.

12. Adjourn

A motion to adjourn was accepted at 12:14 P.M.

Robert I. Batteese, Jr.
Director